

SC & HR v Monroe Woodbury Cent. Sch. Dist.

2013 NY Slip Op 34113(U)

November 19, 2013

Supreme Court, Orange County

Docket Number: 401-2013

Judge: Elaine Slobod

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ELAINE SLOBOD, J.S.C.

SUPREME COURT : ORANGE COUNTY

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SC and HR, Individually and as Parents
and Legal Guardians, of MR, a minor,

Plaintiff,

-against-

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

MONROE WOODBURY CENTRAL SCHOOL
DISTRICT; MONROE WOODBURY CENTRAL
SCHOOL DISTRICT BOARD OF EDUCATION;
JOSEPH DILORENZO, Individually and
in his capacity as Prior
Superintendent of Schools; and
MATTHEW KRAVATZ, individually and
in his capacity as NORTH MAIN STREET
ELEMENTARY SCHOOL; and unknown agents
and assigns of MONROE WOODBURY
CENTRAL SCHOOL DISTRICT, 1-100,

Defendants.

Index No. 401-2013
Motion Date: Oct. 11, 2013

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The following papers numbered 1 to 9 were read on this motion by
defendants for an order dismissing the complaint [CPLR 3211] and this
cross-motion by plaintiffs for an order granting leave to serve and
file a late notice of claim against defendant Edward J. Mehrhof¹:

Notice of Motion-Affirmation-Exhibit A-G.....1-3
Memorandum of Law.....4

¹ Although plaintiffs have framed the relief requested in
their notice of cross-motion as seeking leave to serve and file a
late notice of claim as to all defendants, a notice of claim was
received by the defendant School District on April 29, 2010.
Defendant Edward J. Mehrhof was not named in the original notice of
claim.

Notice of Cross-Motion-Memorandum of Law-Affirmation-Exhibits 5-11.....5-8
 Reply Memorandum of Law.....9

Upon the foregoing papers it is ORDERED that this motion is granted and the cross-motion is denied as moot.

Plaintiffs SC (hereinafter "the mother") and HR (hereinafter "the father" are married and are the parents of MR, an infant, (hereinafter "the infant") who was born on May 27, 2002. The facts which are the subject of this action occurred during the Fall of 2009 and Winter of 2010, when the infant was seven years old and was in the second grade. He was a student at North Main Elementary School in the defendant School District.

According to the complaint, the infant was diagnosed with expressive language delay and moderate to severe sensory defensiveness in preschool. The defendant School District provided the infant with speech therapy and occupational therapy.

Plaintiffs allege that in early November, 2009, during a parent-teacher conference, the father advised the infant's teacher that the infant had reported to his mother that he had been bullied by a student identified as "BS" since the middle of October. This bullying was said to have taken place on the playground. A week or so later, the infant told his parents that another student, "VA", had been hitting him a lot. The mother reported this further bullying to the infant's teacher and spoke to VA's mother. The complaint further alleges that the mother "repeatedly called the classroom teacher concerning continuing acts of violence, bullying and aggression directed at [the infant] by BS" (Complaint dated January 14, 2013,

paragraph 14). In December, 2009, the mother e-mailed defendant Kravatz, then the Superintendent of Schools, with continuing concerns about bullying the infant was experiencing and also spoke to BS' mother, who claimed to be unaware of her son's behavior. Plaintiffs met with Kravatz and reported that the infant, who previously had liked school, did not want to go anymore and had come to hate school. The infant was very unhappy at home. Kravatz's response, the complaint continues, was to designate a recess monitor to supervise the infant during recess. Nevertheless, plaintiffs allege, the bullying continued. Defendant Kravatz then allegedly told plaintiffs that the school could not prevent every bullying incident.

In January, 2010², another student pushed the infant into ice. Other bullying continued. On January 13, 2010, the mother spoke to defendant Kravatz on the telephone. Kravatz allegedly suggested that the infant was not assertive enough and suggested that he join the Boy Scouts. On January 14, 2010, another student choked the infant. On January 21, 2010, the mother received a call from the assistant principal at the school that the infant was crying and that he had been hit. Finally at a meeting on January 25, 2010, school officials told plaintiffs that the infant was overly sensitive and exaggerating and focused on his alleged lack of assertiveness skills. The mother continued to try to lead the School District to realize the seriousness of plaintiffs' complaint and to act appropriately with

² Paragraph 24 of the complaint states that the incident took place in January, 2009. The court presumes this is a typographical error.

respect to the problems the infant was experiencing. Finally, on February 8, 2010, plaintiffs enrolled the infant at Sacred Heart, a private Roman Catholic elementary school.

Thereafter, plaintiffs continued to meet with officials of the defendant School District and urge them to adopt policies plaintiffs thought would eliminate bullying from the infant's former school. The complaint alleges that the officials stated that nothing could be done to adopt new policies and procedures until the next school year.

On April 29, 2010, plaintiffs filed a notice of claim with the defendant School District, alleging, *inter alia*, violations of Federal statutes, violations of the infant's rights to due process and the Equal Protection clause of the Fourteenth Amendment, negligent supervision, intentional infliction of emotional distress, negligent infliction of emotional distress, deprivation of the infant's property right in his education and failure to act *in loco parentis*.

An action followed in the United States District Court for the Southern District of New York [S.C. et ano. v Monroe Woodbury Central School District, et al., 11-CV-1672(CS)]. That action was dismissed on defendants' motion by the Hon. Cathy Seibel, U.S.D.J. in an Opinion and Order dated July 18, 2012.

In its decision, the District Court found that the defendants did not deprive the infant of a property interest in a public education in the school district in which he resides since they did not suspend the infant or refuse to place him in another elementary

school in the defendant School District. Rather, the court reasoned, plaintiffs placed him in a private school without exploring other options in the defendant School District. The court found a claim that the infant was constructively expelled "meritless" (Id. at 13). It further found that the allegations of the amended complaint filed in that court to allege nothing more than mere negligence, which could not give rise to a claim of deprivation of a property interest (Id. at 14) and plaintiffs' substantive and procedural due process claims therefore failed.

The District Court rejected plaintiffs' substantive due process claim on another ground as well. The court did not find that the defendants' actions or omissions shocked its conscience. The court also rejected a procedural due process claim since a process, in the form of meeting with plaintiffs and corresponding with plaintiffs, was afforded. The court rejected a claim that the defendants were under an obligation to inform the plaintiffs that they had a right to appeal to the New York State Commissioner of Education (see infra).

Since the District Court rejected plaintiffs' Federal causes of action it declined "to exercise supplemental jurisdiction over [p]laintiffs' remaining state law claims" (Id. at 22, citations omitted).

This action ensued. Plaintiffs commenced the action by filing a complaint on January 14, 2013. Defendants move, pre-answer, for an order dismissing the complaint pursuant to CPLR 3211. The notice of motion states that the motion is made pursuant to "CPLR 3211(2) and 3211(7)". Presumably, the reference to the latter subdivision is to

CPLR 3211(a)(7) [failure to state a cause of action]. If counsel's reference to the former is meant to invoke CPLR 3211(a)(2), an argument that the court lacks subject matter jurisdiction is not developed in any way. A reading of defendants' memorandum of law indicates that defendants intended to move pursuant to CPLR (a)(3) [standing]; CPLR 3211(a)(5) [statute of limitations and res judicata]; CPLR 3211(a)(7) [failure to state a cause of action; failure to state a cause of action due to a failure to exhaust administrative remedies; and failure to state a cause of action as to Mehrhof for failure to plead compliance with the notice of claim requirements of Education Law § 3813] (see City of New York v Kraus, 100 AD3d 755 [2013]; Town of Oyster Bay v Kirkland, 81 AD3d 812 [2011]). Since plaintiffs have answered the motion on the merits, the defect is not fatal to the motion [CPLR 104].

The claim that the infant's parents lack standing to sue on his behalf is devoid of merit [CPLR 1201]. The court agrees with defendants, however, to the extent they assert that plaintiffs failed to exhaust their administrative remedies before resorting to litigation:

Section 310 of the Education Law provides that any party "conceiving himself aggrieved" by an official act or decision of "any officer, school authorities, or meetings concerning any ... matter under this chapter, or any other act pertaining to the common schools" [Education Law § 310(7)] may appeal to the Commissioner of Education who is "authorized and required to examine and decide the same". Plaintiffs did not bring their complaints about North Main

Street Elementary School's anti-bullying policy (or its alleged deficiencies) before the defendant School Board and appeal any adverse determination to the Commissioner of Education.

In Matter of Mirenberg v Lynbrook Union Free School Dist. Bd. of Educ. (63 AD3d 943 [2009]), the Appellate Division, Second Department applied the exhaustion of remedies doctrine to affirm the dismissal of a proceeding pursuant to CPLR Article 78 to review a disciplinary suspension of a fourteen year old student (see Matter of Mirenberg, 950 NYS2d 492 [Sup. Ct. Nassau Cty. 2008]). The Second Department held that the exhaustion of remedies doctrine should apply in the context of a decision by school officials.

Here, as the District Court Judge found in the Federal action brought by these plaintiffs, plaintiffs decided to remove their child from the public schools and place him in a parochial school and did not pursue their claim that the anti-bullying policy was inadequate or unenforced with the Board of Education, much less by appeal to the Commissioner. As the District Court Judge further found, the appeal process to the Commissioner afforded plaintiffs procedural due process.

Accordingly, defendants' motion to dismiss is granted on the ground that plaintiffs failed to exhaust their administrative remedies.³

³ The court is not persuaded by defendants' argument that this action is barred by the doctrines of res judicata and collateral estoppel. The District Court Judge explicitly declined to reach the merits of any state law claim and her ruling was limited to the issue of whether the complaint stated a cognizable claim under Federal law.

Settle clerk's judgment dismissing the complaint, without costs or disbursements.

The foregoing constitutes the decision and order of the court.

Dated: November 19, 2013
Goshen, New York

E N T E R

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HON. ELAINE SLOBOD, J.S.C.

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